



CLIENT ALERT

Open Meetings: Civility Not Required

On March 7, 2023, the Massachusetts Supreme Judicial Court issued its opinion in Barron v. Kolenda¹, a case involving Massachusetts' Open Meeting Law and the public comment policy implemented by the Town of Southborough's Select Board ("Select Board"). Specifically, the Court held that civility restraints on the content of speech at a public comment session in a public meeting violate the Massachusetts state constitution and are prohibited.

At a December 2018 Select Board meeting, Plaintiff vocalized her objections to alleged open meeting violations and other municipal actions by the Select Board. In response to her comments, a member of the Select Board accused Plaintiff of violating the Select Board's "public participation at public meetings" policy (the "public comment policy") and threatened her with removal from the meeting.² The public comment policy provided in pertinent part that "[a]ll remarks and dialogue in public meetings be respectful and courteous, free of rude, personal or slanderous remarks." Plaintiff subsequently filed a lawsuit claiming a violation of her right under Article 19 of the Massachusetts Declaration of Rights "to assemble, speak in a peaceable manner, and petition her town leaders for redress."

The Supreme Court held that the Massachusetts constitution recognizes a well-established right of citizens to engage in "the fullest and freest discussion" so long as that right is exercised in an "orderly and peaceable manner." In particular, the Court noted that "orderly and peaceable" is not synonymous with "respectful and courteous" and, therefore, the public comment policy's prohibition on public comments the Select Board deemed to be "rude, personal or slanderous" was impermissible. The Court further held, relying on previous case law, that a public entity may impose reasonable restrictions on time, place or manner of public comment, however, only to the extent such restrictions are narrowly tailored to serve a significant governmental interest and leave open ample alternative channels for communication of information.

Public entities subject to the Open Meeting Law should review and ensure that any public comment policies (1) allow for the "fullest and freest" discussion of public matters; (2) do not unlawfully restrict public comment; and (3) any restrictions on public participation are solely

¹ Civ. Action No. SJC-13284 (Mar. 7, 2023).

² Plaintiff had accused the Select Board of breaking the law by violating the Open Meeting Law. A member of the Select Board in turn accused Plaintiff of slandering town officials. In response, Plaintiff told the town official to "[S]top being a Hitler . . . You're a Hitler," at which point the town official moved the meeting into recess and threatened to have Plaintiff escorted from the meeting.

limited to time, place or manner³. Any other restrictions on content of expression are likely to be prohibited under the Massachusetts state constitution.

If you have questions about compliance with the Open Meeting Law, please contact Attorneys Elka T. Sachs (esachs@kb-law.com) or Bettina Toner (btoner@kb-law.com).

³ Manner refers to the way in which the speaker communicates (*e.g.*, the medium, such as a sign or the volume of audio.)